

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
NOVEMBER 1, 2011**

**CALL TO
ORDER**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present were Gina Klempel, Mark Hash, Gary Krueger and Terry Kramer. Scott Hollinger was absent. Allison Mouch, Bailey Minnich and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were 15 people in the audience.

**PUBLIC
COMMENT**
*(not related to
agenda items)*

None.

**APPROVAL OF
MINUTES**

Klempel motioned and Kramer seconded to approve the October 4, 2011 minutes. The motion passed unanimously.

**MELODY
WATTS /
MIDWAY MINI-
MART**
(FCU 11-05)

A request by Melody Watts, for a Conditional Use Permit to allow for the installation of a 45- foot monopole wind turbine within the Happy Valley B-1 (Neighborhood/Professional Business) Zoning District. The property is located at 4899 Highway 93 South.

STAFF REPORT

Bailey Minnich reviewed Staff Report FCU 11-05 for the Board.

**BOARD
QUESTIONS**

Kramer and Grieve discussed if the turbine could be classified in another category since a wind turbine was mechanical and an aerial mast was inanimate.

**APPLICANT
PRESENTATION**

Jeff Arcel, Mother's Power, explained the reasons for the application for the CUP which included the search to incorporate renewable energy for the business. He continued to explain the turbine was an opportunity turbine which meant it had high visibility, the noise level of the turbine when operating, how the turbine could be maintained, the operating life of the turbine without maintenance, and the fact the design was specifically for urban and residential neighborhoods. It was only 10 feet taller than the existing height variance in the area.

**BOARD
QUESTIONS**

The board and staff asked for clarification on the actual height of the turbine, where the decibel level of operation came from, and

what happened if the turbine was declared abandoned.

**PUBLIC
COMMENT**

None.

**BOARD
DISCUSSION**

Hash wanted to place a condition which concerned what would happen if the noise level of the turbine surpassed 50 decibels.

Kramer's concern was the sound level in a residential area.

Krueger and Grieve discussed the board's role in approving a CUP concerning neighborhood impacts.

The board discussed what comparable decibel levels were around the property such as road traffic, and the condition concerning current and future lighting.

The board and Grieve discussed at length what common noises were near the 50 decibel level and when OSHA (Occupational Safety and Health Administration) recommended monitoring noise levels.

**MAIN MOTION
TO ADOPT
F.O.F.
(FCU 11-05)**

Kramer made a motion seconded by Hash to adopt staff report FCU 11-05 as findings-of-fact.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.
(FCU 11-05)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO AMEND
CONDITION #5,
ADD
CONDITION #8
AND APPROVE
(FCU 11-05)**

Hash made a motion to amend condition #5 to read:

Condition #5 – ~~Current and~~ future lighting installed on the property shall be in compliance with Section 5.12 of the Flathead County Zoning Regulations.

and add condition #8 to read:

The noise from the turbine will not exceed 50 decibels.

And approve.

The motion failed due to a lack of second.

**MAIN MOTION
TO AMEND
CONDITION #5,
ADD
CONDITION #8
AND APPROVE
(FCU 11-05)**

Kramer made a motion and Klempel seconded to amend condition #5 to read:

Condition #5 – ~~Current and~~ future lighting installed on the property shall be in compliance with Section 5.12 of the Flathead County Zoning Regulations.

and add condition #8 to read:

The noise from the turbine will not exceed 70 decibels.

And approve.

**BOARD
DISCUSSION**

Hash felt the board was becoming arbitrary concerning the decibel levels. He felt uncomfortable with the figure of 70 decibels. He suggested other changes if the motion passed.

The board discussed alternate wording.

**SECONDARY
MOTION TO
WITHDRAW
CONDITION #8
FROM MAIN
MOTION**

Kramer motioned and Klempel seconded to withdraw condition #8 from main motion.

**BOARD
DISCUSSION**

Grieve asked for clarification on the secondary motion.

**ROLL CALL TO
WITHDRAW
CONDITION #8
FROM MAIN
MOTION**

On a roll call vote, the motion passed unanimously.

**MAIN MOTION
TO AMEND
CONDITION #5
AND APPROVE
(FCU 11-05)**

On a roll call vote the motion passed unanimously.

LEDYARD
(FCU 11-06)

A request by John Ledyard, for a Conditional Use Permit that would allow an outbuilding to be utilized for a home occupation, a catering business, and allow non-familial employees in the operation of the business. The property is located at 280 Twin Bridges Road within the Blanchard Lake, AG-40 (Agricultural) Zoning District.

STAFF REPORT

Allison Mouch reviewed staff report FCU 11-06 for the board.

BOARD
QUESTIONS

Klempel and Mouch discussed if a light in a picture over the garage was a motion light.

Krueger asked if that light was one of the lights which was considered to be non compliant.

Mouch said yes, it was.

APPLICANT
PRESENTATION

Erica Wirtila, Sands Surveying, represented the applicant. She passed out current photos of the property to the board. She gave an overview of the property which included a secondary access, and the benefits of having a secondary access. She also spoke about the level of quality in the outbuilding, the fact the applicant would be able to conform to all of the conditions, what used to be in the spot the current outbuilding now sat, the fact the building had its own well, septic system and was inspected monthly by the environmental health department.

She explained the layout of the outbuilding and the fact it would not be obtrusive to the neighbors. She went on to explain further the layout of the applicant's property, how big the property was, what the occupations of the neighbors were, and that the area was heavily screened and well buffered.

She said the applicants continued to use the property for agricultural use with horses, barns, and large equipment. The applicant was also a contractor so there was large equipment already on the property. The property was not used as a contractor's storage unit. She said once the letter of complaint from the county arrived, the applicants stopped the classes and events which were scheduled and were moving forward with the strict conditional use permit for a catering business only. She explained why it was difficult to put hard numbers to a catering business especially concerning hours in which employees would be working. In the future, they may pursue having events or classes on the property if it was feasible. At this point they were

only pursuing the CUP for the catering business. Traffic should only have a 1.5% increase. Both of the issues concerning signage raised in the staff report would be easy to remedy. She reviewed and further explained the packet of pictures she handed out to the board earlier. She said the applicants wished to speak before the board and answer questions as well.

Krueger asked if she anticipated a situation where an employee would need to be at the facility after operating hours.

Wirtila said she would defer to the applicant to answer the question.

Kristin Ledyard, applicant, reviewed at length her history in Montana, her accomplishments, how she had given back to the community, as well as her ties to the area. She had never charged for any events on the property. A scheduled wedding for a dear friend was canceled on her property once she received the letter of complaint from the county and she paid for her friend's wedding to the tune of \$2,500 to occur on another property.

Krueger asked if she anticipated needing employees at the facility earlier in the morning if they had a catering event planned for the morning hours.

Ledyard said yes.

Kramer said the evening hours including takedown and bring back could run past 9 or 10 o'clock in the evening.

Ledyard said yes they often did, but the nice thing was since they had the garage all of the unloading happened inside and did not affect the neighborhood.

John Ledyard, applicant, reviewed at length the history of the property since he had owned it, improvements he had made, all the permits he had obtained for the structure, and the fact the state had signed off on everything which concerned construction. He said catering was not a seven day a week or even a five day a week business. It was a couple of days a week. He said the traffic numbers had been arrived at assuming the business ran seven days a week, 365 days a year. He did not think the traffic would have that large of an impact. The work hours were pretty much by job only. They had several different jobs because Montana was not an easy place to make things work and having

his job plus the catering business allowed them to make things work and give back to the community.

**PUBLIC
COMMENT**

Raymond Shupert, 500 Twin Bridges, was for the application.

Joseph Earl Shupert, 500 Twin Bridges, was for the application.

Jeffrey Wagar, 7957 US Hwy 2 W, was for the application.

Kristen Hamilton, 420 Hilltop Ave, was for the application.

Rachel Haskovic, 209 Minnesota Ave, was for the application.

Allen Clark, 396 Twin Bridges, was against the application.

Vickie Kelley, 1314 4th St, was for the application.

Paula Johnson-Gilchrist, was for the application.

**STAFF
REBUTTAL**

Mouch said the county was not involved with state building permits, but the building permits did need to be in compliance with local zoning. When the Planning and Zoning office reviewed the outbuilding for the septic sign off, it was represented and reviewed as a guest house. There was a little bit of miscommunication along the way. If the office knew the building was built to commercial standards for commercial use that would have changed the discussion concerning the septic sign off. She also discussed the fact in AG-40 only one principle use was permitted per tract of record. There were options for a temporary use on the property if the applicant wanted to look into doing seasonal events and also the option of coming back and requesting an amended CUP to be able to have cooking classes onsite.

Klempel and Mouch discussed what other home based businesses were in the area of the applicant.

Krueger, Mouch and Grieve discussed if the letter sent to the applicant concerning being out of compliance concerned the catering or the events, if the applicant continued to work the catering, if the events were paid events, what constitutes being paid, and what had been done to remedy the situation.

**APPLICANT
REBUTTAL**

Ledyard said he grew up on a farm and discussed the differences between the agricultural zoning concept of beautiful land and

structures and the actuality of farming which included smells, noises and no hours of operations, you worked until the job was done.

**BOARD
DISCUSSION**

Klempel said a person could not make a living with agricultural uses on an AG-40 zoned land. She said AG zones were anything but quiet.

Krueger and Mouch discussed Condition #5 which was a standard condition listed under home occupations and was meant to have the person operating a home occupation submit a notarized document stating this is what I am doing, this is how it complies with the standards, this is why it is permitted. Because it was a standard condition in the section, it had to be required.

Krueger and Grieve discussed if the applicant could have an event if they were not charging and the subtleties of what charging and what not charging looked like.

**MAIN MOTION
TO ADOPT
F.O.F.
(FCU 11-06)**

Kramer made a motion seconded by Hash to adopt staff report FCU 11-06 as findings-of-fact.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.
(FCU 11-06)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Krueger felt if the applicant had a breakfast, they would start earlier than the hours of operation allowed. He did not want to set them up to be in violation.

The board and staff discussed at length options to have the applicant not be in violation of the CUP, if hours of operation were necessary as well as the pros and cons of hours of operation concerning a home based business. They continued to discuss possible wording for a motion.

Hash wanted to complement the applicant on their hard work to present their case to the board and also thank the Planning Office for going the extra yard for the board.

**MAIN MOTION
TO AMEND
CONDITION #7
AND APPROVE
(FCU 11-06)**

Hash made a motion seconded by Kramer to amend condition #7 to read;

Condition #7 – *Catering functions occurring within the kitchen facility and generating no deleterious impacts to neighbors are not restricted in hours of operation. Catering functions occurring outside the structure, on the subject property that may have a deleterious impact on neighbors – such as deliveries, garbage removal, excessive employee traffic, etc. – are limited to 6:00 AM to 10:00 PM seven (7) days a week. Hours of operation for the proposed home occupation (catering business) shall be limited to 8:00 AM – 10:00 PM daily.*

And approve.

OLD BUSINESS None.

NEW BUSINESS None.

ADJOURNMENT The meeting was adjourned at approximately 8:18 pm. on a motion by Kramer. The next meeting will be held at 6:00 p.m. on December 6, 2011.

Scott Hollinger, Chairman

Donna Valade, Recording Secretary

APPROVED AS **SUBMITTED**/CORRECTED: 12 / 6 / 11